IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1736 of 1997

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KANTIBHAI VALLABHBHAI PATEL - Petitioner(s)
Versus
COMPETENT AUTHORITY & DEPUTY COLLECTOR & 5 - Respondent(s)

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Appearance :
MR MC BHATT for Petitioner(s) : 1,
MS MINI NAIR, AGP for Respondent(s) : 1 - 3.
Respondent(s) : 4 - 6 SERVED .

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 20/07/2007

ORAL JUDGMENT

This is a petition preferred under Articles 226 and 227 of the Constitution of India against the order dated 6th November, 1989 made by the State Government

in exercise of powers conferred by Section 34 of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as, **"the Act of 1976"**). The facts leading the present petition are as under:

The petitioner-Kantibhai Vallabhbhai Patel is one of the sons of Vallabhbhai Patel. The said Vallabhbhai passed away in the year 1968 leaving behind him his widow, the respondent no.6 herein, and the petitioner and two other sons Natwarlal Vallabhbhai Patel and Mahendrabhai Vallabhbhai Patel, the respondents nos.5 and 4 respectively. He had left certain agricultural lands and also a residential house. The agricultural lands comprised of Survey No.195 admeasuring 4856 sq.meters and Survey No.673 admeasuring 4956 sq.meters. Admittedly, on the appointed day, the respondent no.4 Mahendrabhai was a minor. Upon introduction of the Act of 1976 the petitioner and the respondents nos.4,5 and 6 (hereinafter referred to as, **"the holders"**) made a declaration of their holding in form no.1 as envisaged by Section 6 of the Act of 1976. The aforesaid land Survey No.673 admeasuring 4956 sq.meters was admittedly an agricultural land and was exempt from the provisions of the Act of 1976. The

competent authority, by its order dated 5th June, 1986 declared that the total holding of the holders was 4916 sq.meters comprising the land Survey No.195 and the residential house. The competent authority further held that amongst the mother, two major sons and a minor son, the family was entitled to retain 4500 sq.meters of land. Consequently, it was held that the land admeasuring 416 sq.meters of the land Survey No.195 was excess vacant land. The said order was not challenged by the holders and had become final. However, the said order was taken into suo motu revision by the State Government in exercise of powers conferred by Section 34 of the Act of 1976. After issuing show-cause notice to the holders and after giving opportunity of hearing to them, the State Government was pleased to hold that each of the holders had 1/4th share in the total land. The son Mahendrabhai being minor, his share was required to be included in the share of his mother. Thus, the total holding of the mother and the minor son was computed to be 2458 sq.meters. The mother and the minor son were held to be entitled to retain one unit of land i.e. 1500 sq.meters and remaining 958 sq.meters was held to be excess vacant land in the hands of the

mother and the minor son. Feeling aggrieved, the petitioner Kantibhai, one of the major sons has preferred the present petition.

Mr.Bhatt has submitted that the impugned order dated 6th November, 1989 was not served upon the holders. It was in February, 1997 that the holders learnt about the impugned order. Therefore, a belated petition. He has relied upon the definition of the words 'person' and 'family' defined in clauses (i) and (f) respectively of Section 2 of the Act of 1976. He has submitted that for the purpose of the Act of 1976, an individual is a 'person' and the 'family' includes an individual the wife or husband, as the case may be, and the minor unmarried children. In other words, the major children in the family are not included in the word 'family' for the purpose of the Act of 1976. In his submission, on the facts of the present case, the holders comprised three families (1) the widowed mother and the minor child Mahendrabhai and (2) each of the major sons. The said three families were entitled to retain land equivalent to the ceiling area i.e. 1500 sq.meters. Thus, the holders were entitled to retain 4500 sq.meters of the land in aggregate.

Only the remaining 358 sq.meters of land could be said to be excess vacant land in the hands of the holders. He has next submitted that inspite of the impugned order made on 6th November, 1989, the possession of the land was never taken over by the State Government or the competent authority. The holders continued to be in possession of the excess vacant land until 30th March, 1999, the day on which the Act of 1976 was repealed in the State of Gujarat by the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (hereinafter referred to as, **“the Act of 1999”**). He has submitted that the State Government has produced certain documentary evidence to establish the factum of taking over of the possession of the excess vacant land in the year 1996. In the submission of Mr.Bhatt, the said documents prove that the possession was not taken over in accordance with Section 10(6) of the Act of 1976. The said action was not legal and valid. He has relied upon Sections 10(5) and 10(6) of the Act of 1976. He has particularly relied upon the words "**the competent authority may take possession of the vacant land or cause it to be given to the concerned State Government or to any person duly authorised by such State Government in this behalf”** occurring in sub-

section (6) of Section 10 of the Act of 1976. He has submitted that the statute specifically empowers the competent authority to take possession of the vacant land. This power could not have been delegated to any other authority. It is the competent authority alone who is empowered to take over possession and to pass it over to the State Government or the person duly authorised by the State Government. In the present case, the possession having been taken over by the Mamlatdar, an officer authorised by the State Government to take over possession, the action of the State Government of taking over possession of the excess vacant land is contrary to law and is null and void. The possession of the excess vacant land has thus continued with the holders till the date. He has relied upon the revenue entries made in the 7/12 forms. He has submitted that the land is cultivated by the holders even after the possession was allegedly taken over by the State Government in the year 1996. The possession having continued with the holders, in view of Section 3 of the Act of 1999, the proceedings pending against the holders shall stand abated. The impugned order shall has no effect upon the holding of the holders.

The petition is contested by Ms.Nair. She has relied upon the Government Resolution dated 7th April, 1986 and the order dated 13th July, 1987 pp.118 and 119. She has submitted that the Mamlatdar in the office of the competent authority was specifically empowered to take over possession of the excess vacant land under Section 10(6) of the Act of 1976. The action of the State Government in taking over possession through the Mamlatdar was, therefore, legal and valid.

As to the taking over of the possession of the excess vacant land, she has relied upon the judgment of the Hon'ble Supreme Court in the matter of **M/s.Larsen and Toubro Ltd. v/s. State of Gujarat and others** [AIR 1998 SC 1608]. She has submitted that the Mamlatdar, the duly authorised person had taken over possession of excess vacant land on 8th July, 1996 in presence of the pancha and after making a panch report. She has also relied upon the judgment of this Court in the matter of **Vipinchandra Vadilal Bavishi and another v/s. State of Gujarat and others** [2002(3) GLR 2592].

As to the share of each holder, she has submitted that the State Government has rightly held that the share of the minor child shall be included in the holding of the mother for the purpose of the Act of 1976. In support thereof, she has relied upon the judgment of this Court in the matter of **Hargovindbhai Prabhubhai Patel and another v/s. State of Gujarat and another** [1993(2) G.L.R. 1100].

As to the share of each holder in the lands of the deceased Vallabhbhai Patel, I am of the opinion that the succession opened in the year 1968 when the said Vallabhbhai died. Each of his heirs i.e. the wife and the three sons had an equal share in the lands of the said Vallabhbhai. Irrespective of their age and status, each of them had 1/4th share in the lands Survey No.195 i.e. 1214 sq.meters each. On the appointed day, the two sons being major, were a separate family for the purpose of the Act of 1976 and had a right to hold one unit of land, while the third son Mahendrabhai being a minor, he would be part of the family of his mother as defined in Section 2(f) of the Act of 1976. The mother and the minor son

Mahendrabhai together had one-half share in the land Survey No.195 i.e. 2428 sq.meters and as a family they were entitled to hold one unit of land i.e. 1500 sq.meters. The remaining 928 sq.meters land was excess vacant land in their hands.

The contention that the holders made three families (1) of the widowed mother and the minor son and (2) of each of the major sons, and that each such family was entitled to retain one unit of land i.e. 1500 sq.meters each requires to be rejected outright. The provisions of the Act of 1976 did not and were not intended to govern the law of inheritance. The inheritance would be governed by the personal law i.e. the Hindu Succession Act in the present case. The question of 'family' would arise under the Act of 1976 for the purpose of computation of total holding of a family and of excess vacant land, if any. In the present case, in my view, the State Government has rightly held that the mother and the minor son made one family for the purpose of the Act of 1976 and their total holding as a family was one-half of the land Survey No.195 i.e. 2428 sq.meters and that as a family they were entitled to retain one unit of land

i.e. 1500 sq.meters and that the land admeasuring 928 sq.meters was excess vacant land in their hands.

At this stage, Mr.Bhatt has submitted that 60 sq.meters of the total holding was the residential house which was exempt from the Act of 1976. Nevertheless, the said land has been included in the total holding of the holders. He has submitted that though none of the holders challenged the order of the competent authority, the petitioner be permitted to raise that issue and the excess vacant land in the hands of the holders be calculated accordingly. I agree with Mr.Bhatt. He is right in submitting that the land of the residential house was exempt from the provisions of the Act and could not have been included in the total holding of the holders. Though the said issue was not raised by any of the holders, irrespective of the fate of the present petition, I am of the opinion that the said land admeasuring 60 sq.meters should be excluded from the total holding of the holders and computation of the excess vacant land should be made accordingly.

As to the possession, the State Government has

produced the notice given under Section 10(5) of the Act of 1976 and the notice of possession given under Section 10(6) of the Act of 1976. The possession has been taken over by the Mamlatdar on 8th July, 1996 in presence of pancha and the copy of the panch report has also been produced on the record. In my view, it is enough to prove the act of taking over possession of the excess vacant land.

As to the authority of the Mamlatdar to take over possession, as recorded hereinabove, the Mamlatdar was specifically empowered to take over possession of the excess vacant land under the Act. The contention that it was the competent authority alone who was empowered to take possession under Section 10(6) of the Act of 1976 is not acceptable. Sub-section (5) of Section 10 of the Act of 1976 refers to the handing over possession of the excess vacant land by the holder to the State Government or any person duly authorised by the State Government. Whereas, sub-section (6) of Section 10 of the Act of 1976 provides for a situation where the holder fails to handover the possession as envisaged by sub-section (5) of Section 10 of the Act of 1976. It specifically states that the competent

authority may take possession of the vacant land or cause to be given to the State Government or to any person duly authorised by the State Government. This necessarily means that the possession be taken over either by the State Government itself or by any person duly authorised by the State Government or by the competent authority. The contention and the reliance placed upon the revenue entries that even after the alleged taking over of the possession of the vacant land the holders have continued in possession of the vacant land is also not acceptable. The revenue entries relied upon by Mr.Bhatt refer to the entire land Survey No.195. It is not in dispute that only 958 sq.meters of land Survey No.195 has been declared to be excess vacant land; the remainder is admittedly in possession of the holders of the land. The 7/12 forms relied upon by Mr.Bhatt also record the factum of taking over possession of the excess vacant land to the extent of 958 sq.meters. The specific endorsement **“958 sq.meters vacant”** has been made in the form No.7. Thus, it is apparent that not only the State Government has taken over possession of the excess vacant land but has also processed it further to make necessary mutation entry in the revenue record.

For the aforesaid reasons, all the contentions raised by Mr.Bhatt except in connection with the land of residential house shall fail. There is one more reason why the petition deserves to be dismissed. The petitioner before this Court Kantibhai is one of the major sons of the late Vallabhbhai Patel. Admittedly, the share of the petitioner Kantibhai in the land Survey No.195 has been held to be less than the ceiling area; no part of it has been held to be excess vacant land for the purpose of the Act of 1976. It is the widowed mother and the minor son Mahendrabhai, the respondents nos.6 and 4 respectively whose share in the land Survey No.195 has been adversely affected by the impugned order. It is they alone who can be said to be aggrieved party and had a cause of action. None of them has challenged the impugned order made by the State Government. In my view, the petitioner having no locus standi or cause of action, the petition at his hand is not maintainable. Further, it appears that the challenge to the impugned order in the present petition is grossly belated in as much as the order made as far back as in the year 1989 is challenged in the present petition preferred in the year 1997. The

explanation given by the petitioner is hardly palatable. Nevertheless, as the petition has been entertained and admitted to final hearing, the petition is not rejected on the grounds of delay, laches and acquiescence but on merits as aforesaid.

In above view of the matter, the petition is dismissed except that for computation of excess vacant land held by the respondents nos.6 and 4, the widowed mother and the minor son Mahendrabhai, from the total holding, their one-half share in the residential house i.e. 30 sq.meters should be deducted. The extent of the excess vacant land in the hands of the respondents nos.6 and 4 should, therefore, be reduced to 928 sq.meters from 958 sq.meters calculated by the State Government.

Subject to the above direction, rule is discharged. The parties will bear their own cost.

Mr.Bhatt requests that this order be stayed and the interim relief operating pending this petition be

continued for some time. The request is granted. The interim relief operating pending the petition shall stand continued upto 3rd September, 2007 on condition that the petitioner and the respondents nos.4,5 and 6 will maintain status quo as to the excess vacant land.

(Ms. R.M.Doshit, J.)

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